JOHN T. FEY, Clerk

Supreme Court of the United States

October Term, 1957

No. 380

THE ARGONAUT NAVIGATION COMPANY, LTD.,

Petitioner

v.

PANAGIOTIS KOTSIFAKIS AND J. L. MOREWITZ AND B. M. MOREWITZ,

Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

HUGH S. MEREDITH
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Counsel for Petitioner

August 19, 1957

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The Argonaut Navigation Company, Ltd., prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above entitled case on June 12, 1957.

OPINIONS BELOW

The memorandum opinion of the District Court (Vol. 1, p. 38) printed in Appendix A hereto, is reported in 138 F. Supp. 945 and 1956 A. M. C. 184. The memorandum opinion of the District Court taking no action on the motion to stay (Vol. 1, p. 46) filed by respondents is unreported and is printed in Appendix B hereto. The opinion of the

Circuit Court of Appeals (Vol. 2, p. 8) is unreported and is printed in Appendix D hereto.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 12, 1957 (Vol. 2, p. 8). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

QUESTIONS PRESENTED

1. Whether a litigant has the right to dismiss his attorney at any time, with or without cause.

2. Whether attorneys can prosecute an appeal in the name of their client after they have been dismissed as attorneys, and after the death of their client.

3. Whether the Lower Court has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision when it allows attorneys to docket an appeal approximately sixteen months after noting the appeal and then allows the same attorneys (acting on their behalf) to argue their appeal without filing any brief whatsoever.

4. Whether a lower court, upon ascertaining that a litigant has dismissed his attorneys and compromised his claim in the absence of fraud or collusion, is justified in setting the attorneys' fee based on the settlement, when the attorneys refuse to admit their dismissal.

STATEMENT

On September 6, 1955 a libel in Admiralty was filed by the respondent of Kotsifakis, a Greek seaman, against the British SS *Argovan*, her master, L. Delaney, and her alleged

owners or operators, A. Lusi, Ltd., Argonaut Navigation Co., Ltd., and Argonaut Trading Agency, Inc., alleging personal injury and wage claims. The suit was filed by Messrs. Morewitz and Morewitz, Attorneys of Newport News, Virginia, allegedly representing Kotsifakis. On September 26, 1955, Kotsifakis wrote a letter to Messrs. Morewitz and Morewitz by registered mail in both Greek and English dismissing them as his attorneys and stating that when he "signed a retainer in your office under the date of August 2nd, 1955, I did not understand what I was signing as I do not speak nor write English" (App. E).

On October 17, 1955, the respondent Kotsifakis settled and compromised his claims for $964.88 with John C. Monroe, Inc., New York, N. Y., acting as agent for the actual owner Argonaut Navigation Co., Ltd., and executed a release both in Greek and English. Upon instructions from the shipowner, petitioner's attorneys wrote a letter to respondents and stated that the owner recognized that Messrs. Morewitz and Morewitz had an outstanding lien on the settlement. An offer was made to adjust the fee or have it fixed by the U. S. District Judge which was refused (App. A). Exceptive allegations were then filed by this petitioner setting forth the dismissal of Messrs. Morewitz and Morewitz and the settlement. A stipulation was entered into by proctors for both parties that if certain testimony was taken in New York, the evidence of three witnesses would reveal that the respondent Kotsifakis signed the release as his free act and deed; that the release was written in English and in Greek; that respondent read the release before executing same; that respondent acknowledged that he understood the contents and meaning of the release, and that he was not forced or persuaded in any manner to execute the same; that for a period of approximately three

weeks prior to the signing of the release, he had visited the offices of John C. Monroe, Inc., acting on behalf of Argonaut Trading Agency, Inc., insisting that his claim be settled; that Kotsifakis also exhibited copies of a registered letter, written in both English and Greek, with a return receipt addressed to Messrs. Morewitz and Morewitz discharging them as his attorneys (Vol. 1, p. 34).

On November 30, 1955, a hearing was held by the United States District Court on the exceptive allegations. Messrs. Morewitz and Morewitz put on no evidence whatsoever to show that they had not been dismissed as proctors for the respondent Kotsifakis, but only denied that fact to the lower court. Petitioner freely admitted the lien of Messrs. Morewitz and Morewitz on the settlement in accordance with Virginia law, Section 54-70 of the Code of Virginia 1950 which reads as follows:

> "Any person having or claiming a right of action sounding in tort or for liquidated or unliquidated damages on contract, may contract with any attorney at law to prosecute the same, and such attorney shall have a lien upon such cause of action as security for his fees for any services rendered in relation to the cause of action or claim. And when any such contract shall be made, and written notice of the claim of such lien shall be given to the opposite party, his attorney or agent, any settlement or adjustment of such cause of action shall be void against the lien so created, except as proof of liability on such cause of action. Nothing in this section shall affect the existing law in respect to champertous contracts."

Messrs. Morewitz and Morewitz insisted it was the duty of the District Court to proceed to hear the case as a continuation of the original action and thus establish their right

to a larger fee (Vol. 1, p. 40). They put on no evidence as to the value of their services.

The District Court found that the attorney-client relationship had been severed and sustained the exceptive allegations in a well written opinion (App. A). It set a fee based on one-third of the settlement figure (App. A). A final decree was entered on December 24, 1955 (Vol. 1, p. 38). On December 28, 1955, Messrs. Morewitz and Morewitz filed a motion impliedly charging the Court with bias (Vol. 1, p. 44). On December 29, 1955, the Court entered an order taking no action on the motion (Vol. 1, p. 53) supported by a Memorandum (App. B).

On January 5, 1956, an appeal was filed by Messrs. Morewitz and Morewitz to the United States Court of Appeals for the Fourth Circuit (Vol. 1, p. 54). Having failed to docket the case after fifteen months, petitioner filed a motion to docket and dismiss pursuant to the Rule 11.1 of the Rules of the U. S. Court of Appeals for the Fourth Circuit which reads as follows:

> "Appeals other than in criminal cases shall be docketed in this court within 40 days of the filing of the notice of appeal in the court below, by filing with the clerk of this court the record on appeal. It shall be the duty of appellant to cause the record to be filed with the clerk of this court for docketing within the time allowed; and cases not so docketed may be dismissed on motion."

On April 22, 1957, the motion was denied by the lower court without assigning any reason therefor (App. C). The case was argued on May 31, 1957.

Prior to the argument, petitioner having learned that Kotsifakis was killed on November 9, 1955, felt that in good conscience it should inform the lower court of that fact, which it did by filing a suggestion on the record. Messrs.

Morewitz and Morewitz never informed either court of that fact at any time.

Messrs. Morewitz and Morewitz never filed a brief of any kind in support of their appeal. Nor did they ever intervene at any time on their own behalf. The lower court merely added their names as appellants in its order of 22 April 1957 (App. C). A motion to dismiss on account of failure of respondents to file a brief was filed with the lower court by petitioner (Vol. 2, p. 5) pursuant to Rule 12.2 of the said Court and argued. Rule 12, Sections 1 and 2 reads as follows:

1. "Thirty days before the term to which a case is docketed for hearing, counsel for appellant or petitioner shall file with the clerk of this court 25 copies of a printed brief conforming to the requirements of Rule 10; and ten days before the term, counsel for appellee or respondent shall file 25 copies of a printed brief conforming to said requirements. A reply brief may be filed by appellant or petitioner, provided 25 printed copies thereof are filed at least three days before the day on which the case is set for argument. One copy of all briefs filed shall forthwith be furnished by the clerk to each of the counsel of record engaged upon the opposite side.

2. "When, according to this rule, an appellant or petitioner is in default, the case may be dismissed on motion; and when an appellee or respondent is in default, he will not be heard, except on consent of his adversary, or by request of the court."

The lower court never ruled on said motion. Instead it entered a two paragraph order on June 12, 1957, vacating and setting aside the decree of the District Court without citing any law whatsoever or stating why it disregarded the

findings of fact of the District Court, in spite of the fact that respondents never put on any evidence (App. D).

REASONS FOR GRANTING THE WRIT

The decision of the lower court establishes a rule of law to the effect that a litigant cannot dismiss his attorney and compromise his claim without the concurrence of the attorney. Because of the brevity of the court's opinion, it is necessary to examine the opinion of the District Court to comprehend the lower court's ultimate holding. Nevertheless when the two opinions are read together, and the complete lack of evidence on the part of the respondents is considered, the determination of the lower court becomes completely obvious.

I. This holding in the instant case, which vacates and sets aside the decision of the District Court, is in direct conflict with the decision of the Supreme Court in *In Re Paschal,* 10 Wall. 483, 77 U. S. 483, 496, 19 L. Ed. 992; the decision of the Circuit Court of Appeals for the Second Circuit in *The Flush,* 277 F. 25, Cert. denied 1922, *Bulk Oil Transports* v. *Thompson,* 42 S. Ct. 184, 257 U. S. 657, 66 L. Ed. 421; the decision of the Court of Appeals for the Fifth Circuit in *Doggett* v. *Deauville Corp.,* 148 F. (2d) 881; and the decision of the Court of Appeals for the Ninth Circuit in *The Golden Star,* 82 F. (2d) 687.

In the instant matter, there was no evidence whatsoever put on by the respondent or his attorneys; as a matter of fact no brief whatsoever was filed by respondent or his attorneys on their own behalf in the appellate court. On the other hand, the District Court clearly found that respondent Kotsifakis had dismissed his attorneys prior to compromising his claim and had executed a release of his own free wish and without duress. Nevertheless, the Court

of Appeals for the Fourth Circuit determined without any factual foundation whatsoever, that the release had been signed by the respondent "in the absence of and without the approval of his counsel", where in fact he had already dismissed his counsel.

As was stated by Mr. Justice Bradley in *In Re Paschal, supra,* at p. 496:

> "it cannot be seriously claimed that the complainant is so fixed and tied up by the arrangement (contract of employment) that it cannot change its attorney . . . the relations between counsel and client are of a very delicate and confidential character, and unless the utmost confidence prevails between them the clients' interest must necessarily suffer."

Judge Mathews, of the Circuit Court of Appeals for the Ninth Circuit, writing for that Court in the case of *The Golden Star, supra,* stated as follows:

> "It is unquestioned that parties to a lawsuit may settle and compromise their litigation without consulting counsel; and that, in the absence of a statute giving the attorney a lien for his fees, courts will not intervene, unless there has been collusion between the parties and an attempt to defraud the attorney out of his fees. *Swanson* v. *Chicago, St. P. & K. C. Ry. Co.,* supra; approved in *Re Baxter & Co.* (C.C.A.), 154 F. 22, 24; *Hilditch* v. *American Bumper Corporation* (D.C.), 15 F. (2d) 451. The rule is the same in tort cases in admiralty (*Peterson* v. *Watson,* 19 Fed. Cas., page 380, No. 11,037), although in certain wage cases the proctor has been permitted to recover costs (The Victory, 28 Fed. Cas., page 1179, No. 16,937).
>
> "While I do not approve the action of respondents' claims agent in settling the case without notice to libel-

ant's proctor, yet the facts and the law will not justify a judgment in favor of the proctor."

II. It is crystal clear that the determination of the Circuit Court of Appeals for the Fourth Circuit in permitting respondents Messrs. Morewitz and Morewitz to appeal the decree of the District Court after they had been dismissed as attorneys and after the death of the respondent Kotsifakis is in absolute conflict with the decision of the Court of Appeals for the Sixth Circuit in *Brown* v. *Grand Trunk R. Co.*, 124 F. (2d) 1016, and the decision of the Court of Appeals for the Ninth Circuit in *Department of Water & Power of City of Los Angeles* v. *Anderson*, 95 F. (2d) 577, Cert. denied, 59 S. Ct. 67, 305 U. S. 607, 83 L. Ed. 386.

In both of these cases it was held that the authority of attorneys to represent a party in an original action is at end when the first judgment is rendered, in the absence of a showing to the contrary.

Nevertheless, the lower court in the instant case allowed the attorneys to appeal the decision of the District Court without that authority. Further, the record reflects nowhere that attorneys Messrs. Morewitz and Morewitz ever intervened in their own behalf, nor filed any appeal on their own behalf. Yet the lower court apparently regarded them as appellants and added their names as such in the order filed April 22, 1957, denying the appellee's motion to docket and dismiss (App. C).

III. The Court of Appeals for the Fourth Circuit has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision when it allowed attorneys Messrs. Morewitz and Morewitz to docket an appeal approximately sixteen months after noting it and then allowing the same

attorneys (acting on their own behalf) to argue the appeal without filing any briefs whatsoever.

The action of the lower court is in direct conflict with the decision of the Supreme Court of the United States in *The Catherine,* 11 U. S. 99, 7 Cranch 99, 3 L. Ed. 281, and the decision of the Court of Appeals for the District of Columbia in *Creel* v. *Creel,* 184 F. (2d) 449.

Further, in the instant case the lower court assigned no reason whatsoever for allowing the appeal to be docketed after a passage of time of sixteen months and in allowing appellants Messrs. Morewitz and Morewitz to argue the appeal after failing to file any brief whatsoever. A motion to docket and dismiss had been filed and argued by petitioner and denied by the lower court without assigning any reason whatsoever (App. C). A motion to dismiss for failure of respondents Messrs. Morewitz and Morewitz to file a brief was also duly filed and argued (Vol. 2, p. 5), but was not even mentioned by the lower court in its opinion. The action of the lower court was in direct violation of its own Rules of Court Numbers 11(1) and 12(2).

IV. It is submitted that the trial court upon ascertaining that the respondent Kotsifakis had dismissed his attorneys and compromised his claim with petitioner, in the absence of fraud or collusion, was wholly justified in setting the attorneys fee based on one-third of the settlement. It is further submitted that in the complete absence of any evidence to the contrary, the lower court was wholly wrong in vacating and setting aside the decree of the District Court, and without assigning any reason therefor.

The decision of the lower court herein is in complete conflict with the decision of the Circuit Court of Appeals for the Second Circuit in *DuBois* v. *New York,* 134 F. 570; *Silverman* v. *Penn. R. Co.,* 141 F. 382, and *Everett, Clarke*

& Benedict v. *Alpha Cement Co.*, 225 F. 931, and the decision of the Court of Appeals for the Sixth Circuit in *Pugh* v. *Snodgrass*, 209 F. 325, all of which stand for the proposition that the power of the court to fix a fee rests in the reasonable discretion of the trial court which hears the evidence. The lower court in effect reverses its decision of *Carbon Steel Co.* v. *Slayback*, 31 F. (2d) 702, which stated that the conclusion of the trial court as to the value of a solicitor's services in determining the amount of allowance of fee for him out of a fund which he was instrumental in collecting, is conclusive, unless the evidence is decidedly preponderate against it. Here, the District Court heard the evidence and fixed what it believed to be a fair fee. The action of the District Court was completely disregarded by the lower court in a peremptory manner and without assigning any reason whatsoever.

It is horn book law that the right of review in federal appellate courts is limited to questions of law appearing on the face of the record, and questions of fact cannot be reviewed, unless plainly wrong. Respondents in the instant case put on no evidence whatsoever, and yet the lower court completely brushed aside the findings of fact of the lower court without stating its reasons therefor.

V. Should this decision stand, commercial interests and litigants in this country will suffer. According to this decision, once a client has walked into an attorney's office, he is completely at the attorney's mercy and the litigation can never be terminated, no matter what the circumstances, unless the attorney consents. In effect, the client no longer has any control over his own case, and once he has retained a lawyer, he cannot dismiss him. Predatory attorneys can use the courts to their own end, regardless of the rights of the citizen for whom the tribunals of law exist. The extent of

the harm then can be done by attorneys of evil intent is unlimited, particularly where as in the instant case the client, a foreign national, did not even understand the contract he had signed (App. E). It is respectfully submitted that in the instant case, the lower court vacated and set aside the decree of the District Court with complete disregard of the law and evidence. Respondents not only failed to put on any evidence, but in fact refused to do so (App. A). Certainly in this instance the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. Such a decision will only serve to encourage to stir up litigation, a vicious evil which should be dealt with strongly by this Court.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

HUGH S. MEREDITH
BRADEN VANDEVENTER, JR.
Counsel for Petitioner

August 19, 1957

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

In Admiralty No. 234

PANAGIOTIS KOTSIFAKIS,
Libellant-Petitioner,

v.

A. LUSI, LTD., ARGONAUT NAVIGATION CO., LTD.,
ARGONAUT TRADING AGENCY, INC., and
SS ARGOVAN,
Respondents.

Memorandum

The libel in the above action was filed by Messrs. Morewitz & Morewitz, proctors for libellants, on the 6th day of September, 1955. Such service as was obtained was through the medium of delivering a copy of the citation on Robert H. Hasler, Jr., of the firm of Hasler & Company, stated by proctors for libellant to be agents for A. Lusi, Ltd., and Argonaut Trading Agency, Inc. The respondents, A. Lusi, Ltd. and Argonaut Trading Agency, Inc., promptly filed a motion to vacate the service of process and to dismiss the action but, for reasons hereinafter stated, it appears to be unnecessary to pass upon the questions thus raised.

On October 28, 1955, Argonaut Navigation Co., Ltd., appearing specially herein, filed its exceptive allegations alleging as follows:

1. That a valid release in the sum of $964.88 had been signed by the libellant on or about October 17, 1955.

2. That Messrs. Morewitz & Morewitz, proctors for libellant, were discharged as such by letter dated September 26, 1955, duly signed by the libellant and attached as an exhibit to the exceptive allegations.

Respondent, Argonaut Navigation Co., Ltd., similarly filed a notice to admit, requesting libellant to state whether or not he had previously discharged his proctors, Messrs. Morewitz & Morewitz, and whether or not the release attached to the exceptive allegations had been executed by libellant. Objections to the notice to admit were filed by Messrs. Morewitz & Morewitz.

On November 2, 1955, an alias citation was served in person on the master of the SS *Argodon,* alleged to be a sister ship to the SS *Argovan,* and alleged to be owned and controlled by the same respondents. An affidavit of the master of the vessel indicates that the SS *Argodon* and SS *Argovan* are controlled by different corporations but this is likewise immaterial to determine under the facts hereinafter stated.

Messrs. Morewitz & Morewitz and Messrs. Vandeventer, Black & Meredith, proctors for the various parties, have stipulated that if certain testimony was taken in New York, the evidence of three witnesses would reveal that the libellant signed the release in the sum of $964.88 as his free act and deed; that the release was written in English and in Greek; that libellant read the release before executing same; that libellant acknowledged that he understood the contents and meaning of the release and that he was not forced or persuaded in any manner to execute the same; that for a period of approximately three weeks prior to the signing of the release libellant visited the offices of John C. Monroe,

Inc., acting in behalf of Argonaut Trading Agency, Inc., insisting that his claim be settled; that libellant also exhibited copies of a registered letter, together with return receipt, written in both English and in Greek, addressed to Messrs. Morewitz & Morewitz and discharging them as his attorneys.

At a hearing on the exceptive allegations held at Newport News, Virginia, on November 30, 1955, the Court requested counsel to state their respective positions. Mr. Vandeventer, representing the respondents, stated that during the latter part of September, 1955, the libellant came to his office in Norfolk, Virginia, and, with the assistance of an interpreter, indicated that he wished to make settlement of his claim. Mr. Vandeventer replied that it would be improper for him to discuss the matter without libellant's counsel being present and thereafter permitted the interpreter, speaking for libellant, and counsel for libellant to confer by telephone for a considerable period of time. Subsequently libellant and the interpreter endeavored to see the undersigned United States District Judge but permission for an interview was refused unless counsel for both sides were present. It was after these two events that libellant went to New York and effected the settlement above mentioned.

It is fundamental that any party litigant has an absolute right to discharge his counsel in any proceeding, conditioned that counsel be paid the fair and reasonable value of his services. Messrs. Morewitz & Morewitz, proctors for libellant, complied with Section 54-70 of the Code of Virginia, 1950, in asserting their lien at the time of their original employment. As to the lien so created, the settlement is void. Counsel for respondents freely admit that respondents are obligated to pay Messrs. Morewitz & Morewitz the fair value of their services rendered in accordance with the settle-

ment effected. Messrs. Morewitz & Morewitz insist that it is the duty of the Court to proceed to hear the case as a continuation of the original action, thus establishing their right to a larger fee. From the standpoint of practical procedure it appears that it will be most difficult for Messrs. Morewitz & Morewitz to now prove the claim and, in any event, the sole purpose of the continuation of any litigation would be to ascertain the true amount of any lien. The attention of Court has been directed to *State Farm Fire Insurance Co.* v. *Gregory,* 4 Cir., 184 F. (2d) 447, which was an action by an attorney at law alleging *malicious interference with a contract of employment.* In the cited case the Court pointed out that the adjuster for the insurance company, after learning of plaintiff's employment by the insured, persuaded the claimant to effect a settlement for less than the face of the policy by representing to him that it would be more advantageous than proceeding with the litigation and dividing the recovery with the plaintiff. This Court has no reason to disagree with the opinion in *State Farm Fire Insurance Co.* v. *Gregory,* but in the present action we are not concerned with an action for malicious interference with the employment contract. The only matter now before the Court is the duty to protect the lien of the attorney in a summary manner, all of which is admitted by respondents. The remedies of an attorney in such a situation are well stated in 7 C. J. S., p. 1180, sec. 231, "Attorney and Client". This does not appear to be a case in which the respondents or their counsel have been guilty of any fraud or collusion. In fact, it seems that the libellant was overly anxious to effect a settlement, and it is generally well stated that the party litigant controls his case so far as the acceptance or rejection of a settlement offer may be

involved. There is adequate authority to the effect that an attorney must first obtain leave of court to continue the prosecution of any action after settlement has been made and that this is a discretionary matter resting in the breast of the Court.

The present action involves a foreign seaman whose whereabouts is unknown. If it became necessary for him to testify in the case, the matter would be indefinitely delayed. In the absence of any showing to the contrary, it seems that the settlement was fair and reasonable and not subject to attack.

The exceptive allegations relating to the release are sustained. Counsel for respondents will prepare an order directing the respondents, Argonaut Navigation Co., Ltd. or Argonaut Trading Agency, Inc., to pay to Messrs. Morewitz & Morewitz the sum of $321.63, same representing one-third of the total settlement of $964.88, and said respondents shall further pay the court costs accrued in this action. Upon the payment of the aforesaid sums the lien of said attorneys shall stand discharged and this action shall stand dismissed with prejudice. Should proctors for libellants deem that they have basis for an action founded upon malicious interference with their contract of employment, their rights can hardly be jeopardized by the proceedings taken by the Court in a summary manner to protect their lien.

(s) Walter E. Hoffman
United States District Judge

Norfolk, Virginia
December 21, 1955

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

In Admiralty No. 234

PANAGIOTIS KOTSIFAKIS,

Libellant,

v.

A. LUSI, LTD., ARGONAUT NAVIGATION CO., LTD., ARGONAUT TRADING AGENCY, INC., and SS ARGOVAN,

Respondents;

and

In Admiralty No. 252

LEONIDAS KABANES, ET ALS,

Libellants,

v.

STAMATIS POLEMIS, ET ALS, and the SS FALCON,

Respondents;

and

Misc. No. 463

ANTON BOURASIS, ET ALS,

Petitioners,

v.

STAMATIS POLEMIS, Master of the SS FALCON, ET ALS,

Respondents.

Memorandum

In the above entitled actions Jacob L. Morewitz, proctor for the libellants and petitioners therein stated, has filed in Admiralty No. 252 and Miscellaneous No. 463, and has lodged in Admiralty No. 234, what is entitled a "Motion". In Admiralty No. 252 and Miscellaneous No. 463 said proctor requests the entry of a stay order to permit him to apply for a Writ of Prohibition. In Admiralty No. 234 said proctor requests the Court to take no further action therein but no mention is made of any intention to apply for a Writ of Prohibition. The so-called "Motion" in Admiralty No. 234 is made returnable to this Court on January 3, 1956. The "Motion" in Admiralty No. 252 and Miscellaneous No. 463 is not made returnable at any time or place.

In Admiralty No. 234 there is nothing remaining for the Court to do. On December 21, 1955, the Court filed its memorandum opinion which in no sense indicates any departure "from the usual and accepted order of judicial procedure", and in no manner suggests that the Court "continued to disregard the precepts, as well as the spirit and intent of *Whittaker* v. *McLean* (C. C. A. D. C.), 118 F.

(2d) 596". A final decree was entered in this cause on December 24, 1955. The "Motion" of Mr. Morewitz was "lodged" in the Clerk's Office of this Court on December 28, 1955. It is true that the final decree was entered without bearing the endorsement of Messrs. Morewitz and Morewitz but an accompanying letter from Braden Vandeventer, Jr., proctor for respondents, states that the decree was presented "to Mr. J. L. Morewitz for his endorsement" and that "he refused to sign it in any manner". Ordinarily the Court would insist upon a hearing relative to the entry of such decree, but the recent practice of counsel involved clearly indicates that orders and decrees are frequently not endorsed, thus unduly delaying the administration of justice. The Court took the precaution of noting that the decree was being entered "upon representation that Messrs. Morewitz and Morewitz refused to endorse". There is, therefore, nothing further to be done in Admiralty No. 234, and the Clerk has been directed to mark the "Motion" as "lodged". The remedy of Mr. Morewitz, acting "per se and as of proctors for libellant", is by way of appeal from the terms of the final decree.

Miscellaneous No. 463 is a petition for a "writ of habeas corpus, temporary injunction, declaratory judgment and/or other appropriate relief". The Court rendered its memorandum opinion on December 20, 1955, and directed counsel for Immigration authorities to present a final order in accordance with the views expressed in the memorandum. The opinion sets forth the factual situation therein involved. No final order has as yet been presented. While the Court fails to see any possible grounds for granting a Writ of Prohibition in this case, this is not a matter for this Court to determine and an order is this day being entered staying proceedings herein for a period of fifteen (15) days from

this date to enable Mr. Morewitz to apply for said Writ. In the interim period the Court will similarly refrain from entering the final order.

Admiralty No. 252 involves a claim of eleven (11) Greek seamen, members of the crew of the SS *Falcon* (the same vessel which was involved in Miscellaneous No. 463). The only proceedings thus far presented to the District Judge for action are:

(1) A hearing held on November 29, 1955, to fix the bond for the release of the vessel; the Court having convened at 7:00 P. M. and have adjourned at 9:20 P. M., a 93-page transcript of said proceedings being on file in this case. This hearing was attended by Mr. Burt M. Morewitz and Mr. David E. Morewitz, while Mr. Jacob L. Morewitz was appearing before Chief Justice Warren in the habeas corpus matter. The Court fixed the bond for the release of the vessel at $10,000.00, and the vessel presumably sailed that night.

(2) A preliminary proceeding was held on Sunday, November 27, 1955, upon representation of counsel that the libel and a petition for a writ of habeas corpus would be filed. A transcript of these proceedings are on file in Miscellaneous No. 463 and, to a limited extent, is related to Admiralty No. 252.

(3) On December 1, 1955, respondents paid into the registry of the Court the sum of $2360.00 representing wages due seven (7) of the seamen who left on the SS *Falcon* under orders from Immigration to detain and deport. Whether the seamen should be classified as deserters has never been ascertained. Respondent, Polemis, master of the SS *Falcon* requested a prompt hearing to determine this question, in which request Attorney Morewitz joined. Faced

with a congested docket, and at the request of both counsel, The Court fixed December 21, 1955, for a hearing. Unfortunately, a jury case in another matter, commenced on December 20, had not been concluded and the Court's office personnel telephoned counsel advising of the necessary continuance as the jury case was not concluded until 5:45 P. M. At the further request of Mr. Morewitz transmitted to the Court's Law Clerk, the date of December 29, 1955, was fixed. Thereafter, counsel for respondents advised the Court that Mr. Morewitz had stated that he did not intend to appear on December 29 as he was required to be in Williamsburg, Virginia, on that day. On December 27 the Court addressed a letter to both counsel advising that the matter was being continued and fixing Saturday, January 7, 1956, as a date for hearing. In view of the intentions of Mr. Morewitz to apply for a Writ of Prohibition, the scheduled hearing on January 7, 1956, will not be held, and an order is this day being entered staying further proceedings at the request of proctor for libellant for a period of fifteen (15) days in order that an application for the Writ may be filed.

The foregoing summarizes all that the Court knows of the proceedings in these three cases as far as active participation by the Court is concerned.

In the event the application for a Writ of Prohibition is filed with the period of fifteen (15) days, the Court will stay further proceedings pending action by the Circuit Court of Appeals, or such other Court before whom the application is filed.

A review of the proceedings in these three cases fails to indicate how Attorney Morewitz can, in good faith, contend that this Court has violated the rule in *Whittaker* v. *McLean*, supra. In a more recent proceeding, totally unrelated

to the three cases herein involved, this Court imposed a fine of $25.00 upon Jacob L. Morewitz for contempt of court. After having warned Mr. Morewitz on two prior occasions that he must desist from referring to statements of opposing counsel as "an unmitigated lie", and after having stated to him that a continuation of such practice would bring forth a fine for contempt, Mr. Morewitz, during the trial of a case and in a shouting manner, referred to a statement of opposing counsel as "a damnable lie". The Court then imposed the fine in question, all of which took place on December 16. Since that date Mr. Morewitz has not personally appeared in court. It should also be noted that, during the same proceeding, and before the imposition of the contempt fine, Mr. Morewitz, apparently in a fit of rage during a statement made by opposing counsel, took off his glasses and threw them upon the counsel table where they actually "bounced" a considerable distance toward the bench. This action was reprimanded by the Court. If the actions of the Court in this respect violate the precepts set forth in *Whittaker* v. *McLean*, supra, Judge readily "pleads guilty" to same.

There have been other minor instances in which the Court has had occasion to reprimand Mr. Jacob L. Morewitz. On November 4, 1955, the Court addressed a letter to Mr. Morewitz with respect to an isolated instance of altering a pleading previously filed in the Clerk's Office. The letter, in part, reads as follows:

> "This will also confirm my conversation with your son, Burt M. Morewitz, as well as with you, relating to your action a striking a word from the affidavit which had been marked 'filed' in the Clerk's office. I believe that you and I fully understand each other with respect to future practices along this line and that I am assured that there will be no changes made by you in any papers

which have been previously filed in the Clerk's Office without the express permission of the Court. Both of us realize the importance of adhering strictly to this rule as such actions would constitute a criminal act if combined with willful intent. I appreciate the fact that you had no such intention in the instant case and, for that reason, I have concluded to forget about the matter with your assurance that it will not be repeated in the future."

It is difficult to believe that the foregoing action indicates any bias or prejudice on the part of the District Judge.

During the trial of the same case in which Mr. Morewitz was fined for contempt, it is true the Court made a suggestion that the advice given by Mr. Morewitz to his client was responsible for his client's subsequent order of deportation by Immigration authorities. It would be necessary to review the entire transcript in that case (now in the process of being prepared) to determine whether the Court's statements were proper. This statement was made in the Court's oral opinion and, in the judgment of the Court, was essential to determine whether the petitioner in habeas corpus had received a fair hearing before the Special Inquiry Officer of the Immigration Service.

For a period of several months Mr. Jacob L. Morewitz has stated in open court on a number of occasions that he intended to file an affidavit of bias and prejudice pursuant to 28 U. S. C. A., sec. 144. The Court has stated to Mr. Morewitz that he was at liberty to take such action at any time he deemed it proper to do so but, once taken, the affidavit would be construed as a suggestion that the Judge of this Court was biased and prejudiced against Mr. Morewitz and not against any of his clients as none of them are personally known by the Judge. The filing of the so-called "Motion" in these cases is the full equivalent of an affidavit

of bias and prejudice. The Judge of this Court needs no such suggestion and is perfectly willing to disqualify himself in all cases in which Mr. Jacob L. Morewitz is personally involved, if that is the will and pleasure of Mr. Morewitz. While there have been no known unpleasantries with Mr. Burt Morewitz and Mr. David E. Morewitz, sons of Mr. Jacob L. Morewitz and associated with him in the practice of law, if either of these gentlemen feels that the Judge of this Court is biased and prejudiced against him, the Judge is willing to disqualify himself in all cases involving the firm of Morewitz & Morewitz.

In the interest of the proper administration of justice there should, however, be some provision made for the fixing of bonds to release an arrested vessel where libel proceedings are filed within a matter of hours before the vessel is due to sail. If counsel are required to attend hearings in Alexandria, Virginia, or Richmond, Virginia, where the other District Judges maintain offices, it would hold the vessel an unduly long period at great expense to all concerned. The statutory bond could release the vessel in such cases, but the amounts claimed are frequently in excess of what should be required to release the ship. For these reasons, where the vessel is arrested within 36 hours prior to scheduled sailing time and counsel are unable to arrange a hearing by Judge Hutcheson or Judge Bryan before the hour fixed for sailing, upon filing an affidavit to this effect, the undersigned Judge will reserve the right to conduct hearings fixing the amounts of bonds to release vessels so arrested. If this action is improper under the circumstances stated, this Judge will refrain from acting upon receiving advice from the appellate court.

The Court is willing to enter all orders and decrees endorsed as agreed upon by all counsel in any case even though Mr. Morewitz may be involved therein. At such time, if

ever, as Mr. Morewitz may indicate that he desires his matters heard and determined by the undersigned Judge, his case will be given every reasonable consideration.

(s) Walter E. Hoffman
United States District Judge

Norfolk, Virginia
December 29, 1955

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7440.

PANAGIOTIS KOTSIFAKIS, and MOREWITZ AND MOREWITZ,
Appellants,

v.

BRITISH SS ARGOVAN, formerly the CANADIAN SS ARGOVAN, her boats, engines, tackle, apparel, etc., et al.,
Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News.
(D. C. No. 234 In Admiralty)

On consideration of the motion of the appellee Argonaut Navigation Co. Ltd., to docket and dismiss libellant's appeal

in the above entitled case, the response to the motion, and the argument of counsel thereon,

It is now here ordered by this Court that the motion to docket and dismiss be, and it is hereby, denied.

Further ordered that the appellant Panagiotis Kotsifakis be, and he is hereby, allowed to prosecute his appeal in this Court in accordance with Section 1916, Title 28, United States Code, without prepaying fees or costs or furnishing security therefor, and to file six (6) typewritten copies of brief and appendix in lieu of twenty-five (25) printed copies required by the rules, and directed to furnish copies to opposing counsel.

John J. Parker
Chief Judge, Fourth Circuit

Simon E. Sobeloff
United States Circuit Judge

Clement F. Haynsworth, Jr.
United States Circuit Judge

Filed
Apr 22 1957
R. M. F. Williams, Jr.
Clerk

A true copy,
Teste:

Richard M. F. Williams, Jr., Clerk
U. S. Court of Appeals for the Fourth Circuit
By (s) Margaret L. Davis
Deputy Clerk

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 7440.

PANAGIOTIS KOTSIFAKIS, and MOREWITZ AND MOREWITZ,
Appellants,

v.

BRITISH SS ARGOVAN, formerly the CANADIAN SS ARGOVAN, her boats, engines, tackle, apparel, etc., et al.,
Appellees.

Appeals from the United States District Court for the Eastern District of Virginia, at Newport News.

In the above entitled cause the appellee having suggested the death of libellant and having filed an affidavit showing that his death occurred on November 9, 1955; and it appearing that final decree dismissing the cause was entered on December 24, 1955 after the death of libellant; and it further appearing that the dismissal was based upon a release alleged to have been signed by libellant prior to his death in the absence and without the approval of his counsel and that the allowance of fees to counsel was based upon the amount paid upon execution of the release, without regard to the value of the services rendered by counsel or the amount which might have been recovered in the cause in the absence of settlement:

It is ordered that the final decree entered by the court below be vacated and set aside and that the cause be remanded for further proceedings, to the end that a personal representative of the deceased libellant may be appointed and made a party to the cause with right to contest the validity of the settlement, if so advised, and, if the settlement be upheld, that fees may be allowed counsel for libellant in the light of the value of services rendered, not necessarily limited by the amount of the settlement.

(s) John J. Parker
Chief Judge, Fourth District

(s) Simon E. Sobeloff
United States Circuit Judge

(s) Clement F. Haynsworth, Jr.
United States Circuit Judge

Filed
Jun 12 1957
R. M. F. Williams, Jr.
Clerk

A true copy,
Teste:

(s) Richard M. F. Williams, Jr., Clerk
U. S. Court of Appeals for the Fourth Circuit

APPENDIX E

REGISTERED

September 26, 1955

Messrs. N. Morewitz & Morewitz
P. O. Box 478
Newport News, Va.

Subject: S.S. Argovan
Injury of Panagiotis Kotsifakis

Gentlemen:

I confirm my discussion with you of my claim against the SS *Argovan* which you are handling for me in Norfolk, Va. I requested that you make an attempt to settle the case and you advised me that you will do so at your convenience.

I hereby request that you do not represent me any further as of this date in my claim against the SS *Argovan* and her Owners or in any other claim I may have pending in the United States. I further request that you return to me all of the documents and correspondence I submitted to you when I originally retained you as my attorney in this case.

I would like to add that when I signed a retainer in your office under the date of August 2nd, 1955 I did not understand what I was signing as I do not speak nor write English.

Yours very truly

(s) .....
Panagiotis Kotsifakis

I, *Alex Kuches*, a Notary Public for the State of New York and a translator of the Greek and English languages

by profession, wish to state that the above was translated to Mr. P. Kotsifakis in the Greek language by me, that he fully understood the contents and that he signed it before me on the 26th day of September 1955.—

(s) Alex Kuches
Alex Kuches, Notary Public